WP(C) 4490/2007

BEFORE

HON'BLE THE AMITAVA ROY

The petitioner's transfer from Silchar Rural Road Division in the Public Works Department of the State to Diphu Road Division as the Executive Engineer by the notification No. CON. 39/2001/Pt.I/268-P dated 24/8/2007 of the Commissioner and Special Secretary to the Government of Assam, Public Works Department (hereafter referred to as the Department) has triggered off the instant proceeding. Correspondingly by the notification No. Con.39/2001/Pt.I/268 of the same date by the aforementioned authority, the respondent No. 3 has been posted in place of the petitioner. By order dated 29/8/2007, this Court had directed maintenance of status quo with regard to the petitioner's incumbency as Executive Engineer, Public Works Department, Silchar Rural Roads Division. The parties having exchanged their pleadings in between, the petition is being disposed of at the motion stage after hearing the learned Counsels.

2. I have heard Mr. SN Sharma, Sr. Advocate assisted by Mr. YS Mannan, learned Counsel for the petitioner, Mr. I. Choudhury, learned Standing Counsel, Public Works Department, Government of Assam and Mr. N. Dutta, Sr. Advocate assisted by Mr. J. Abedin, learned Counsel for the respondent No. 3.

3. The petitioner's version is that while he was serving as the Assistant Executive Engineer (TC), PWD, he by notification dated 7/9/2005 was transferred and posted on temporary promotion as Executive Engineer, Public Works Department at the Office of the Additional Chief Engineer, PWD (Hills) Department, Haflong. However, in partial modification of the said notification, he was there after posted as Executive Engineer, PWD, Hailakandi Rural Road Division, by notification dated 21/9/2005. He was further transferred and posted as Executive Engineer, PWD, Silchar Roads Division on 30/1/2006. Next by the impugned order, he, within less than two years of his last posting, has been transferred to Diphu Road Division at the disposal of Karbi Anglong Autonomous Council, Diphu. According to the petitioner, till the date of the institution of the instant proceeding, no transfer order had been issued to him but having come to learn thereof, he procured a copy of the same and appended it to the writ petition. Being aggrieved, he on 27/8/2007 submitted representation before the Commissioner and Special Secretary to the Government of Assam, PWD, Guwahati, citing amongst others his personal inconvenience and family problems with a request to retain him at Silchar. He highlighted therein about the unusual frequency of his transfer from one station to the other. The petitioner has pleaded that the impugned order of transfer is neither in public interest nor in administrative exigency but only to accommodate the respondent No. 3 on extraneous considerations.

4. The official respondents in their affidavit through the Commissioner and Special Secretary to the Government of Assam, Public Works Department, while denying the assertion of frequent transfers have contended that though the petitioner on his promotion to the post of Executive Engineer was posted in the Office of the Additional Chief Engineer, Haflong, by notification dated 7/9/2005, he did not join there pursuant thereto. It was thereafter that his transfer order was modified on 21/9/2005 and he was accordingly posted as Executive Engineer, Hailakandi Rural Road Division. According to the answering respondents, the petitioner's transfer on 30/1/2006 was in compliance of the directives of the Election Commission of India (hereafter referred to as the Commission) issued in connection with the Assembly Election in the State to post out officers who had been serving in the station for three years or in their Home Districts. As Hailakandi happened to be the Home District of the petitioner, he was thus transferred to the Silchar Rural Road Division by the notification dated 30/1/2006. Iterating that the impugned order of transfer had been issued in the exigencies of administration and public interest involved, the respondents have pleaded that as would be evidenced from the notifications dated 24/8/2007, a large number of officers of the department were involved and in the process some who have not completed three years at a particular station have also been affected. It has been categorically stated that the transfers had been effected on the approval of the Chief Minister of the State. The respondents have averred that as the petitioner, i

nspite of his transfer did not handover charge of the office of the Executive En gineer, Silchar Rural Road Division to the respondent No. 3, when requested the Government on 29/8/2007 permitted the latter (respondent No. 3) to assume charge thereof.

5. The respondent No. 3 in his counter has asserted that by the not ification dated 24/8/2007 concerning him, he was promoted to the post of Executi ve Engineer and was posted to officiate in the said capacity at the Silchar Rura l Road Division. By another notification of the same date one Akbor Hussain Mazu mdar, Assistant Executive Engineer (TC), Silchar NH Division, was transferred an d posted in the said capacity at Badarpur BRC Sub-Division, in his place. Accord ingly the answering respondent handed over charge to Shri Akbor Hussain Mazumdar on 27/8/2007 and on the same date reported at his new place of posting at Silch ar Rural Road Division. Though he submitted a joining report addressed to the Ex ecutive Engnieer, Public Works Department, Silchar Rural Road Division, i.e. the petitioner, he was not present in station. On the request of the answering resp ondent therefore the concerned administrative authority allowed him by a communi cation dated 29/8/2007 to assume charge as Executive Engineer, Silchar Rural Roa d Division, Public Works Department. He thereafter on the very same date, took o ver charge of the said office and has been functioning as such till date. The re spondent has stated that to his information the impugned orders of transfer had received the approval of the Chief Minister of the State who incidentally is als o in charge of the Department.

6. In his reply affidavit, the petitioner while reiterating his ple as in the writ petition, has in substance asserted that in compliance of a WT Me ssage dated 24/8/2007 directing him to attend the office of the Commissioner and Special Secretary of the Department on 27/8/2007, he after informing the jurisd ictional Deputy Commissioner came to Guwahati. He by then was not aware of the o rder of transfer and that he came to know of it only on 27/8/2007, the interveni ng two days being holidays. He having returned to Silchar on 29/8/2007 on comple tion of his official works at Guwahati, he came to learn of the joining letter o f the respondent No. 3 on the next working day. In the meantime, he had submitte d a representation before the Commissioner and Special Secretary of the Departme nt against his transfer and initiated the instant proceeding wherein the interim order was passed on 29/8/2007. The petitioner categorically emphasized that he has been continuing as Executive Engineer, Public Works Department, Silchar Rura l Road Division. He also denied Hailakandi to be his home District and avowed it to be Karimganj. He, however, admitted that pursuant to the order dated 7/9/200 5 whereby he was transferred to Haflong, he had no occasion to join there as wit hin days thereafter the same was modified by the order dated 21/9/2005 posting h im at Hailakandi Rural Road Division.

7. In the above assemblage of pleadings, Mr. Sharma has persuasivel y argued that the petitioner has been subjected to unwarranted frequent orders o f transfer and the impugned arrangement involving him and the respondent No. 3 i s neither in administrative exigency nor in public interest. According to the le arned Sr. Counsel, the petitioner who has admittedly not completed three years a t Silchar Rural Road Division as on date has been deliberately picked up to acco mmodate the respondent No. 3 on non-germane considerations. As the petitioner, i f the assailed order of transfer is implemented would face immense personal diff iculties as highlighted in his representation, judicial intervention is called f or in the interest of justice, he urged. Mr. Sharma in order to drive home the p lea of undesirability of the transfer of an employee during mid academic session of his/her children placed reliance on the decision of this Court in Director o f School Education, Madrass and others versus O. Karuppa Thevan and another, (19 94) Supp 2 SCC 666.

8. Mr. Choudhury, learned Standing Counsel of the Department, on th e basis of the relevant official records has submitted that on the contemporaneo us facts, the contention of frequent transfers is patently untenable. He emphasi zed that the orders effected by various notifications dated 24/8/2007 had been t o cater to the institutional needs and have the due approval of the Chief Minist er of the State. The transfers had in fact been delayed in view of the floods in

the State and that no ground exists to interfere with the order impugned.

9. Mr. Dutta has argued that not only Hailakandi is the home District of the petitioner, he had continued there since 1984 to 2006. Though transferred to Haflong on 7/9/2005, he refused to comply with the order and was on promotion retained at Hailakandi. The petitioner's transfer along with others on 30/1/2006 was in deference to the Commission's directions on the eve of the Assembly Elections. The learned Sr. Counsel, therefore, urged that the plea of frequent transfers is belied in the above factual background. Mr. Dutta pointed out that the respondent No. 3's transfer on promotion to Silchar Rural Road Division has also remained unchallenged. Further in the meantime, he having handed over charge to Akbor Hussain Mazumdar as Assistant Executive Engineer, Public Works Department, Badarpur BRC Sub-Division, in absence of any assailment of his (Akbor) order of transfer or his impleadment as a party respondent in the instant proceeding, no relief is legally accordable to the petitioner. The learned Sr. Counsel contended that in view of the above defects the petition infact is liable to be dismissed in limine. As the notifications dated 24/8/2007 evidenced a chain of transfers involving several officers of the department, no interference at the instance of the petitioner on the contentions raised is warranted. Mr. Dutta dismissed the representation to be vague and the petitioner's plea of presence in Guwahati as an yield of after thought.

10. Mr. Sharma in reply submitted on instructions that the petitioner's home District is Karimganj and not Hailakandi as insisted by the respondents.

11. The rival submissions have been duly considered. As alluded hereinabove, the principal challenge on behalf of the petitioner is the perceived extra ordinary frequency in his transfers in the last two years. Though the assertion of impertinent considerations has been pleaded, the same was not seriously dwelt upon at the hearing. Dislocation of the studies of the petitioner's children, however, was underlined while contending that his transfer is neither in administrative exigency nor in public interest. No other ground has either been pleaded or argued.

12. Admittedly, however, the petitioner pursuant to his transfer to Haflong by the notification dated 7/9/2005 did not move out from Hailakandi as by a subsequent notification dated 21/9/2005, he was retained on promotion as Executive Engineer, Public Works Department, Hailakandi Rural Road Division. As is apparent on the face of the notification dated 30/1/2006 (Annexure D to the writ petition), the officers involved therein had been transferred pursuant to the instructions of the Commission communicated by the Election Department by its letters dated 30/12/2005, 4/1/2006 and 25/1/2006 referred to therein. Incidentally, the petitioner's transfer on that occasion was in adherence to the Commission's guidelines and directives in view of an impending elections in the State. The transfer orders dated 7/9/2005, 21/9/2005, 31/1/2006 in the above factual premise, therefore, stricto sensu do not project an exceptional frequency to infer unfair or discriminatory treatment to the petitioner. At the first instance, he was not required to move out of Hailakandi and on the second he along with others had to be posted out on situational needs. The order dated 30/1/2006, to make a mention, had not been questioned by the petitioner.

13. The Department file CON. 39/2001/Pt.I produced by the learned Standing Counsel reveals that the respondent No. 3 along with others was selected on 23/3/2007 for promotion to the posts of Executive Engineer of the Department. Correspondences at the Secretariat level disclose that the vacant post of Executive Engineer (Civil) were urgently required to be filled up in organizational exigencies. The necessary official formalities for posting the selected officers on promotion had been completed in May 2007. The relevant office notice demonstrates that the transfer and posting proposals of the Assistant Executive Engineer and the Executive Engineers of the Department were placed before the Chief Minister of the State on 20/6/2007, which the latter forwarded to the Chief Secretary for scrutiny. The file thereafter in the month of July was laid before the Chief Minister who on a perusal thereof approved the transfer and postings suggested with the rider that the same be effected after the flood season was over. This

was on 6/8/2007. The notifications dated 24/8/2007 were thereafter issued in accord with the transfer and posting of the petitioner and the respondent No. 3 as proposed and approved.

14. The transfers thus effected by the notifications dated 24/8/2007 apparently are general and routine adjustments best suited to the departmental needs as assessed by the concerned authorities. The petitioner or the respondent No. 3 obviously have not been hand picked for their transfer and posting. The records do not divulge any semblance of extraneous consideration or extra departmental intervention as the inducing factor for the transfer of the parties. Instead the records reveal that the placement of the officers had been insisted upon to respond to the departmental imperatives. The transfer guidelines as well do not seem to have been contravened, the Chief Minister of the State having extended his approval to the arrangement.

The decision of the Apex Court in Director of School Education, Madrass and others, supra also is of no avail to the petitioner as no rule of general application has either been recognized or propounded. Rather the ground of academic pursuit of the children of the employee involved had been made subservient to the service exigencies. The facts and circumstances of the case do not disclose any judicially cognizable ground to impeach the petitioner’s transfer as illegal, arbitrary or malafide so as to warrant interference of this Court. The petition being without any merit is thus dismissed. Interim order stands vacated. The above notwithstanding it would be open in the discretion of the departmental authorities to consider the petitioner’s representation on merits and pass appropriate orders as deemed fit and proper. No costs.